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Box: 211 U. S. Bureau of prohibition.
... Digest of Supreme court decisions interpreting the
National prohibition act and Willis-Campbell act (in chrono-
logical order) ... September, 1927. Washington, U. S. Govt.
print. off., 1927.
vi, 54 p. 24¹/₂"
At head of title: Treasury department. Bureau of prohibition.
Another copy in Law. 1927.
1. Prohibition — U. S. 2. Liquor laws — U. S. 1. U. S. Supreme
court. II. Title.
Library of Congress 27-27646
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TECHNICAL MICROFORM DATA

FILM SIZE: 35mm

REDUCTION RATIO: 10:1

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Digest of SUPREME COURT DECISIONS

-interpreting the-

**NATIONAL PROHIBITION ACT
AND WILLIS-CAMPBELL ACT**

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TREASURY DEPARTMENT
BUREAU OF PROHIBITION

DIGEST OF
SUPREME COURT DECISIONS
INTERPRETING THE
NATIONAL PROHIBITION ACT
AND WILLIS-CAMPBELL ACT

(IN CHRONOLOGICAL ORDER)

*For Prohibition Administrators, United States Attorneys
and others concerned*

SEPTEMBER, 1927



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1927

DIGEST OF
SUPREME COURT DECISIONS
NATIONAL PROHIBITION ACT
AND WILLS-CAMPBELL ACT

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MAR 23 1928

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Digest of the United States Supreme Court Decisions Interpreting the National Prohibition Act and the Willis-Campbell Act, Chronologically Arranged

For Prohibition Administrators, United States Attorneys, and Others Concerned

JACOB RUPPERT v. FRANCIS G. CAFFEY

Supreme Court, January 5, 1920

[251 U. S. 264; 64 L. ed. 260]

War—Power of Congress—Passing of war emergency—War-time prohibition.

1. The war emergency had not passed so as to invalidate as new legislation the provision of the Volstead Act of October 28, 1919, extending the prohibition of the act of November 21, 1918, against the manufacture and sale of intoxicating liquors to malt liquors, whether in fact intoxicating or not, with an alcoholic content of as much as one-half of 1 per cent of alcohol by volume.

War—Power of Congress—War-time prohibition.

2. The implied war power of Congress over intoxicating liquors extends to the enactment of laws which will not merely prohibit the sale of intoxicating liquors but will effectually prevent their sale.

States—Relation to Federal Government—Police power.

3. When the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend an exercise by a State of its police power.

War—Power of Congress—War-time prohibition—Nonintoxicating malt liquors.

4. Congress, in the exercise of the war power, could, in order to make effective the existing war-time prohibition against the manufacture and sale of intoxicating liquors, enact the provisions of the Volstead Act of October 28, 1919, extending such prohibition to malt liquors, whether in fact intoxicating or not, with alcoholic content of as much as one-half of 1 per cent of alcohol by volume.

Constitutional law—Due process of law—War-time prohibition.

5. Congress could, consistently with the due process of law clause of United States Constitution, fifth amendment, make effective forthwith the provisions of the Volstead Act of October 28, 1919, extending the existing war-time prohibition against the manufacture and sale of intoxicating liquors to nonintoxicating malt liquors with alcoholic content of as much as one-half of 1 per cent by volume, without making any compensation to the owner of such liquors acquired before the passage of the act, and which before that time he could lawfully have sold.

UNITED STATES *v.* EVERETT SIMPSON

Supreme Court, April 19, 1920

[252 U. S. 465; 64 L. ed. 665]

Commerce—Transportation of intoxicating liquors—Federal regulations—
Carriage by private automobile—Personal use.

The transportation by the owner in his own automobile of intoxicating liquors for his personal use is comprehended by the prohibition of the Reed amendment of March 3, 1917, section 5, against the transportation of intoxicating liquors in interstate commerce, except for scientific, sacramental, medicinal, and mechanical purposes, into any State the laws of which prohibit the manufacture or sale therein of intoxicating liquors for beverage purposes.

GEORGE S. HAWKE *v.* HARVEY C. SMITH

Supreme Court, June 1, 1920

[253 U. S. 221; 64 L. ed. 871]

Constitutional law—Amendment of Federal Constitution—State referendum.

Referendum provisions of State constitutions and statutes can not be applied in the ratification or rejection of amendments to the Federal Constitution without violating the requirement of Article V of such Constitution, that such ratification shall be by the legislatures of the several States, or by conventions therein, as Congress shall decide.

GEORGE S. HAWKE *v.* HARVEY C. SMITH

Supreme Court, June 1, 1920

[253 U. S. 231; 64 L. ed. 877]

This case is governed by the decision in *Hawke v. Smith*, 253 U. S. 221.

STATE OF RHODE ISLAND *v.* A. MITCHELL PALMER—STATE OF NEW JERSEY *v.* A. MITCHELL PALMER—GEORGE C. DEMPSEY *v.* THOMAS A. BOYNTON—KENTUCKY DISTILLERIES & WAREHOUSE COMPANY *v.* W. V. GREGORY—CHRISTIAN FEIGENSPAN *v.* JOSEPH L. BODINE—HIRAM A. SAWYER *v.* MANTTOWOC PRODUCTS COMPANY—ST. LOUIS BREWING ASSOCIATION *v.* GEORGE H. MOORE

Supreme Court, June 7, 1920

[253 U. S. 350; 64 L. ed. 946]

Constitutional law—Amendment—Necessity.

1. The adoption by both Houses of Congress, each by a two-thirds vote, of a joint resolution proposing an amendment to the Constitution, sufficiently shows that the proposal was deemed necessary by all

who voted for it. An express declaration that they regarded it as necessary is not essential.

Constitutional law—Amendment—Two-thirds vote of Congress.

2. The two-thirds vote in each House of Congress which is required in proposing an amendment to the Constitution, is a vote of two-thirds of the Members present—assuming the presence of a quorum—and not a two-thirds vote of the entire membership, present and absent.

Constitutional law—Amendment of Federal Constitution—State referendum.

3. Referendum provisions of State constitutions and statutes can not be applied in the ratification or rejection of amendments to the Federal Constitution without violating the requirement of Article V of such Constitution, that such ratification shall be by the legislatures of the several States, or by conventions therein, as Congress shall decide.

Constitutional law—Prohibition amendment—Validity.

4. The prohibition of the manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes, as embodied in the eighteenth amendment to the Federal Constitution, is within the power to amend reserved by the fifth article of such Constitution.

Constitutional law—Prohibition amendment—Validity.

5. The prohibition amendment to the Federal Constitution by lawful proposal and ratification has become a part of the Constitution, and must be respected and given effect the same as other provisions of that instrument.

Constitutional law—Prohibition amendment—Effect.

6. That part of the prohibition amendment to the Federal Constitution which embodies the prohibition is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress, by a State legislature, or by a Territorial assembly, which authorizes or sanctions what the amendment prohibits.

Constitutional law—Prohibition amendment—Enforcement—Concurrent power.

7. The declaration in the prohibition amendment to the Federal Constitution that "the Congress and the several States shall have concurrent power to enforce this article by appropriate legislation" does not enable Congress or the several States to defeat or thwart the prohibition, but only to enforce it by appropriate means.

Constitutional law—Prohibition amendment—Enforcement—Concurrent power.

8. The words "concurrent power" in the declaration in the eighteenth amendment to the Federal Constitution that "the Congress and the several States shall have concurrent power to enforce this article by appropriate legislation" do not mean joint power, or require that legislation thereunder by Congress, to be effective, shall be approved or sanctioned by the several States or any of them, nor do they mean that the power to enforce is divided between Congress and the several States along the lines which separate or distinguish foreign or interstate commerce from intrastate affairs.

Constitutional law—Prohibition amendment—Enforcement—Concurrent power.

9. The power confided to Congress by the provisions of the eighteenth amendment to the Federal Constitution, that "the Congress and the several States shall have concurrent power to enforce this article by appropriate legislation," while not exclusive, is territorially coextensive with the prohibition of the amendment, embraces manufacture and other intrastate transactions as well as importation, exportation, and interstate traffic, and is in no wise dependent on or affected by action or inaction on the part of the several States or any of them.

Constitutional law—Prohibition amendment—Enforcement—Liquors previously manufactured.

10. The power of Congress to enforce the prohibition amendment to the Federal Constitution may be exerted against the disposal for beverage purposes of liquors manufactured before the amendment became effective, just as it may be against subsequent manufacture for those purposes.

Constitutional law—Prohibition amendment—Enforcement—Statutory definition of intoxicating liquors.

11. Congress did not exceed its powers, under the United States Constitution, eighteenth amendment to enforce the prohibition therein declared against the manufacture, sale, or transportation of intoxicating liquors for beverage purposes, by enacting the provisions of the Volstead Act of October 28, 1919, wherein liquors containing as much as one-half of 1 per cent of alcohol by volume, and fit for use for beverage purposes, are treated as within that power.

WILLIAM G. STREET V. LINCOLN SAFE DEPOSIT COMPANY

Supreme Court, November 8, 1920

[254 U. S. 88; 65 L. ed. 151]

Intoxicating liquor—Warehousemen—Storage for lawful uses—Volstead Act.

1. There is nothing in the Volstead Act of October 28, 1919, which makes it unlawful for a warehouse corporation to permit the storage in its warehouse after the effective date of such act of liquors theretofore lawfully acquired, which are so stored solely and in good faith for the purpose of preserving and protecting them until they shall be consumed by the owner and his family or bona fide guests—uses declared by section 33 of that act not to be unlawful.

Intoxicating liquor—Unlawful possession—Volstead Act.

2. The declaration in section 25 of the Volstead Act of October 28, 1919, that it shall be unlawful to have or possess any liquor intended for use in violating such act, obviously does not apply where the uses to which it is admitted that the owner intends to devote his liquor are those which section 33 of the act declares not to be unlawful.

Intoxicating liquor—Keeping—Volstead Act.

3. Kept for sale or barter or other commercial purposes is what is meant by the word "kept" as used in section 21 of the Volstead Act of October 28, 1919, which declares that any room, house, build-

ing, or place where intoxicating liquor is manufactured, sold, kept, or bartered, in violation of the act, and all intoxicating liquor and property kept and used in maintaining the same, are a common nuisance, and provides penalties for the maintaining of such a place.

Intoxicating liquor—Warehousemen—Possession—Volstead Act.

4. A warehouse corporation which has leased a room in its warehouse for the storage of intoxicating liquors that are in the lessee's exclusive possession and control does not "possess" such liquors within the meaning of section 3 of the Volstead Act of October 28, 1919, which provides that "no person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

Intoxicating liquor—Warehousemen—Delivery to owner—Volstead Act.

5. A warehouse corporation, by permitting the owner of intoxicating liquor lawfully acquired before the effective date of the Volstead Act of October 28, 1919, and stored in its warehouse, to have access to such liquors to take them to his dwelling for lawful use, would not be delivering them, within the meaning of section 3 of such act, which provides that "no person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented."

Intoxicating liquors—Transportation—Warehouse to home of owner.

6. Nothing in the Volstead Act of October 28, 1919, makes it unlawful to transport to the home of the owner, for lawful uses, intoxicating liquors lawfully acquired by him before the effective date of that act, and stored in a warehouse.

Intoxicating liquor—Unlawful possession—Rebutting presumption—Volstead Act.

7. The implication is plain from the provision in section 33 of the Volstead Act of October 28, 1919, making the possession of liquors by any person "not legally permitted" under the act to possess liquor prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of the act, that, if such presumption is rebutted by appropriate testimony, the possession shall be considered not unlawful, even though it be by a person not holding a technical permit to possess it, such as is provided for in the act.

Intoxicating liquors—Confiscation.

8. An intention to confiscate private property even in intoxicating liquors will not be raised by inference and construction from provisions of law which have ample field for other operation in effecting a purpose clearly indicated and declared.

J. W. GOLDSMITH, JR.-GRANT CO. v. UNITED STATES

Supreme Court, January 17, 1921

[254 U. S. 505; 65 L. ed 376]

Internal revenue—Forfeiture—Property of innocent owner.

1. The fact that the seller of an automobile, who had reserved title to it as security for unpaid purchase money, did not participate in or have knowledge of its illicit use by the purchaser in the removal or deposit and concealment of distilled spirits upon which a tax was imposed by the United States and had not been paid, will not prevent the forfeiture of his title to such automobile, under United States Revised Statutes, section 3450, which provides for the forfeiture of the contraband goods, and of every vessel, boat, cart, carriage, or other conveyance whatsoever, and all things used in the removal or for the deposit and concealment of such goods.

Constitutional law—Due process of law—Forfeiture.

2. Construing United States Revised Statutes, section 3450, as authorizing the forfeiture of an automobile used in the removal or the deposit and concealment of distilled spirits upon which a tax was imposed by the United States and had not been paid, notwithstanding the fact that the seller of such automobile, who had reserved title to it as security for unpaid purchase money, did not participate in or have knowledge of the illicit use by the purchaser, does not render such section invalid under the United States Constitution, fourteenth amendment, as taking property without due process of law.

Internal revenue—Forfeitures.

3. The forfeiture provisions of United States Revised Statutes, section 3450, in case of the removal or deposit and concealment of goods or commodities upon which a tax has been imposed by the United States and has not been paid, are not modified by sections 3460 and 3461, so as to prevent the forfeiture of interests for which those sections offer protection.

LAWRENCE AMOS v. UNITED STATES

Supreme Court, February 28, 1921

[255 U. S. 313; 65 L. ed. 654]

Search and seizure—Return of property unlawfully seized.

1. Property seized in the search of a private home by Government agents without warrant of any kind, in plain violation of the United States Constitution, fourth and fifth amendments, should have been returned to the owner on his petition, presented by him after the jury in a criminal prosecution against him was impaneled, but before any evidence was offered.

Evidence—Use when wrongfully obtained—Criminal case.

2. The rule that courts will not stop the progress of the trial of a criminal case to frame a collateral issue to inquire whether evidence offered, otherwise competent, was lawfully or unlawfully obtained,

has no application where it becomes apparent during the trial that there has been an unconstitutional seizure of property of the accused, and the court should exclude such property and any testimony relating thereto, given by the Government agents who made the unlawful seizure, on motion of the accused, made after both property and testimony were introduced in evidence against him.

Search and seizure—Self-crimination—Waiver.

3. The constitutional rights of a person to be secure against unreasonable searches and seizures and self-crimination were not waived when his wife admitted to his home Federal officers, who came without warrant, demanding admission to make search of it under Government authority, even assuming that it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights, since, under the implied coercion here presented, no such waiver was intended or effected.

WILLIS D. WILLIAMS ET AL. v. UNITED STATES

Supreme Court, March 7, 1921

[255 U. S. 336; 65 L. ed. 664]

Appeal—From district court—Affirmance on motion—Fivolous Federal question.

The want of merit in the contention that the provision of the Reed amendment of March 3, 1917, section 5, prohibiting the transportation in interstate commerce of intoxicating liquor into any State whose laws forbid the manufacture or sale therein of such liquor for beverage purposes, is repugnant to the United States Constitution, Article I, section 9, clause 6, prohibiting any regulation of commerce which gives a preference to the ports of one State over those of another, is so plainly established by the decisions of the Federal Supreme Court and the authorities which have followed those decisions as to require the affirmance on motion of a conviction for a violation of such statute, brought up directly from a Federal district court for review, on the theory that the law was unconstitutional for that reason.

J. J. DILLON v. R. W. GLOSS

Supreme Court, May 16, 1921

[256 U. S. 368; 65 L. ed. 994]

Constitutional law—Amendment—Ratification—Time.

1. The fair inference or implication from the United States Constitution, Article V, providing for amendments, is that the ratification must be within some reasonable time after the proposal.

Constitutional law—Amendments—Time limit for ratification.

2. Congress, in proposing an amendment to the Federal Constitution, may, keeping within reasonable limits, fix a definite period for ratification by the States, and could, therefore, validly declare, in the resolution proposing the eighteenth amendment, that it should be inoperative unless ratified within seven years.

Evidence—Judicial notice—Ratification of constitutional amendment.

3. The Federal Supreme Court will take judicial notice of the consummation of the ratification of an amendment to the Federal Constitution.

Constitutional law—Amendment—When operative.

4. The date of the consummation of the ratification of an amendment to the Federal Constitution, which is, by its own terms, to go into effect one year after being ratified, and not the date of the proclamation of the Secretary of State, is controlling upon the question when such amendment becomes operative.

UNITED STATES *v.* YUGINOVICH ET AL.

Supreme Court, June 1, 1921

[256 U. S. 450; 65 L. ed. 1043]

Appeal—By Government in criminal case—Scope of review.

1. The construction or sufficiency of the indictment is not brought before the Federal Supreme Court on a writ of error sued out to a district court under the act of March 2, 1907, to review a decision quashing and sustaining a demurrer to the indictment.

Appeal—By Government in criminal case—Scope of review.

2. For the purpose of interpreting the statute on which an indictment is founded, the meaning placed upon such indictment by the Federal district court will be adopted by the Federal Supreme Court on a direct writ of error sued out under the act of March 2, 1907, to review a decision of the district court, quashing and sustaining a demurrer to such indictment.

Internal revenue—Power of Congress—Taxation of intoxicating liquors.

3. Congress may, under the broad authority of the taxing power, tax intoxicating liquors, notwithstanding the fact that their production is prohibited and punished.

Internal revenue—Power of Congress—Tax law—Moral purpose.

4. The fact that a Federal tax law had a moral end in view as well as the raising of revenue presents no valid constitutional objection to its enactment.

Statutes—Implied repeal—Penal acts.

5. Existing penal statutes are repealed by later ones covering practically the same acts, but fixing lesser penalties.

Internal revenue—Distilled spirits—Penalty for violating laws—Implied repeal—National prohibition.

6. So far as intoxicating liquors intended for beverage purposes are concerned, the provisions of United States Revised Statutes, sections 3257, 3279, 3281, and 3282, making it a criminal offense to defraud or attempt to defraud the United States of a tax upon spirits distilled by one carrying on the business of a distillery, or to fail to keep the sign "registered distillery" on the outside of a place of business used as a distillery, or to carry on the business of a distillery without bond, or to make or permit mash to be made in

any building other than a distillery authorized by law, must be regarded as repealed by the national prohibition act of October 28, 1919, enacted to make effective the United States Constitution, eighteenth amendment, prohibiting the manufacture and sale of intoxicating liquors in the United States for beverage purposes, although such act, in section 35, which repeals all prior laws only to the extent of their inconsistency with it, provides that the act shall not relieve any person from any liability, civil or criminal, theretofore or thereafter incurred under existing laws.

CHAS. CORNELI *v.* GEORGE H. MOORE—GEORGE J. GHIO *v.* GEORGE H. MOORE—WILLIAM H. BRYAN *v.* JOSHUA W. MILES—WALTER A. EASTES *v.* GEORGE F. CRUTCHLEY

Supreme Court, January 30, 1922

[257 U. S. 491; 66 L. ed. 332]

Intoxicating liquors—Volstead Act—Transportation from Government bonded warehouse.

1. The removal of distilled spirits lawfully acquired before the effective date of the Volstead Act of October 28, 1919, from the Government bonded warehouses in which such liquors were on deposit when acquired, to the respective dwellings of the owners, for lawful use, is forbidden by section 3 of that act, which declares that no person shall transport or possess any intoxicating liquor except as authorized by the act, and that all the provisions of the act shall be liberally construed to the end that the use of intoxicating liquor as a beverage shall be prevented, provided that nothing in the act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and there is nothing to the contrary in the provisions of section 25, that it shall be unlawful to have or possess any liquor intended for use in violating such act or of section 33, that it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only, or of section 37, which permits the storage in Government bonded warehouses of liquors manufactured prior to the taking effect of the act, and the transportation of such liquor under permit to such warehouses, or to any wholesale druggist, for sale to such druggist for purposes not prohibited, which latter section should be read in connection with section 6, which permits distilled spirits produced and fit for beverage purposes remaining in bonded warehouses to be withdrawn for denaturing or for deposit in a bonded warehouse established by the act.

Constitutional law—Due process of law—Taking property without compensation—Intoxicating liquors—Volstead Act—Liquors previously manufactured and acquired.

2. Construing the provisions of the Volstead Act of October 28, 1919, as forbidding the removal of distilled spirits lawfully acquired before either that act or the eighteenth amendment to the Federal Constitution became effective from the Government bonded ware-

houses in which such liquors were on deposit when acquired, to the respective dwellings of the owners, for lawful use, does not render the act invalid, as depriving such owners of their property without due process of law, or as taking it for public purposes without such compensation.

ROBERT HAWES *v.* STATE OF GEORGIA

Supreme Court, February 27, 1922

[258 U. S. 1; 66 L. ed. 431]

Constitutional law—Due process of law—Presumption and burden of proof.

A State may consistently with the due-process-of-law clause of the United States Constitution, fourteenth amendment, create by statute a rebuttable presumption of guilty knowledge by the actual occupant of a farm from a finding upon the premises of apparatus for distilling prohibited intoxicating liquors, although, under the local law, a defendant in the criminal case may not testify as a witness, and husband and wife are not competent or compellable to give evidence in any criminal proceeding for or against each other.

TONY VIGLIOTTI *v.* COMMONWEALTH OF PENNSYLVANIA

Supreme Court, April 10, 1922

[258 U. S. 403; 66 L. ed. 686]

States—Concurrent State and Federal powers—Intoxicating liquors—Prohibition amendment—Volstead Act—State legislation.

State legislation which prohibits every sale of spirituous liquors without license, the law applying however small the percentage of alcohol, and although the liquor may not be intoxicating, and although it may be sold only for industrial purposes, was not superseded by the adoption of the eighteenth amendment to the Federal Constitution and the enactment of the Volstead Act of October 28, 1919, to enforce that amendment.

JOHN G. GROGAN *v.* HIRAM WALKER & SONS—ANCHOR LINE *v.* GEORGE W. ALDRIDGE

Supreme Court, May 15, 1922

[259 U. S. 80; 66 L. ed. 836]

Intoxicating liquors—Transportation in bond through United States—Eighteenth amendment—Volstead Act—Treaty rights—Implied repeal.

1. The transportation of intoxicating liquors from a Canadian port through the United States to a foreign port, in accordance with United States Revised Statutes, section 3005, and the treaty with

Great Britain of May 8, 1871, is prohibited by the provision of the United States Constitution, eighteenth amendment, forbidding the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all Territories subject to the jurisdiction thereof, for beverage purposes, and the Volstead Act of October 28, 1919, section 3, declaring that, except as therein authorized, no person shall manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor.

Intoxicating liquors—Transshipment from one foreign vessel to another—Eighteenth amendment—Volstead Act.

2. The transshipment of intoxicating liquor from one British ship to another in New York Harbor is prohibited by the provisions of the United States Constitution, eighteenth amendment, forbidding the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all Territories subject to the jurisdiction thereof, for beverage purposes, and the Volstead Act of October 28, 1919, section 3, declaring that, except as therein authorized, no person shall manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor.

RAINIER BREWING CO. *v.* GREAT NORTHERN PACIFIC STEAMSHIP CO.

Supreme Court, May 15, 1922

[259 U. S. 150; 66 L. ed. 868]

Commerce—Intoxicating liquors—Carload shipments.

The limitations imposed upon the transportation of intoxicating liquors by Rem. (Wash.) Codes & Stat. 1915, sections 6262-1 to 6262-22, authorizing a person to bring into the State not more than 12 quarts of beer or one-half gallon of other liquors, at one time, upon his obtaining a permit, which must be conspicuously affixed to each package, and be canceled by the railway carrier before delivery, and making it unlawful for any railway company to transport liquor in the State which does not have the required permit conspicuously attached to each package, and by the Federal Criminal Code, section 240, providing for the punishment of whoever shall ship in interstate commerce any package containing intoxicating liquor unless so labeled on the outside cover as plainly to show the name of the consignee and the nature and quantity of the contents, make it unlawful for a carrier to receive for bulk delivery to a transfer company named as consignee, for distribution and delivery to the individual permittees, a carload of liquor to be transported to a point in Washington from outside the State, made up of packages, each addressed to separate persons, and bearing the required permits issued to such persons.

ERNEST LIPKE v. EPHRAIM LEDERER

Supreme Court, June 5, 1922

[259 U. S. 557; 66 L. ed. 1061]

Appeal—From district court—Federal question.

1. The Federal Supreme Court has jurisdiction of a direct appeal from a decree of a district court dismissing the bill in a suit to enjoin a collector of internal revenue from collecting the sum demanded under the provisions of the national prohibition act of October 28, 1919, section 35, where complainant claims that such section, as construed and sought to be enforced by the collector, conflicts with the guaranties of the Federal Constitution respecting due process of law and trial by jury.

Internal revenue—Tax or penalty.

2. The mere use of the word "tax" in an act primarily designed to define and suppress crime is not enough to show that, within the true intentment of the term, a tax was laid. When by its very nature the imposition is a penalty, it must be so regarded.

Internal revenue—Tax or penalty.

3. The so-called tax imposed by the national prohibition act of October 28, 1919, section 35, lacks all the ordinary characteristics of a tax, the primary function of which is to provide for the support of the Government, and clearly involves the idea of punishment for infraction of the law—the definite function of a penalty.

Injunction—Illegal tax—Penalty.

4. The prohibition of United States Revised Statutes, section 3224, against suits to restrain the assessment or collection of a tax, has no application to a suit to restrain the collector of internal revenue from collecting the sum demanded by him under the provisions of the national prohibition act of October 28, 1919, section 35, as a penalty.

Equity—Remedy at law.

5. Statutes granting the right to sue to recover back taxes paid under protest have no application, so as to afford an adequate remedy at law, where an internal-revenue officer, without notice, has undertaken to assess a penalty for an alleged criminal act, and threatens to enforce payment by seizure and sale of property, without opportunity for a hearing of any kind.

Injunction—Against revenue officer—Enforcing penalty.

6. Relief by way of injunction should be granted where an internal-revenue officer, without notice, has undertaken to assess a penalty for an alleged criminal act, and threatens to enforce payment by seizure and sale of property without opportunity for a hearing of any kind.

Constitutional law—Due process of law—Trial by jury.

7. The guaranties of the Federal Constitution respecting due process of law and trial by jury are infringed where a revenue officer, without notice, undertakes to assess a penalty for an alleged criminal act, and to enforce payment by seizure and sale of property without opportunity for a hearing of any kind.

Affirmed by *Regal Drug v. Wardell* and *Violette v. Walsh*.

UNITED STATES v. VITO LANZA

Supreme Court, December 11, 1922

[260 U. S. 377; 67 L. ed. 314]

Constitutional law—Double jeopardy—Punishment under both State and Federal statutes.

1. An act with respect to intoxicating liquor which is denounced as a crime by both the National and State sovereignties may be punished under the law of each sovereignty without infringing the provision of the fifth amendment to the Federal Constitution against double jeopardy for the same offense.

Constitutional law—Double jeopardy under Federal Constitution—What constitutes.

2. The fifth amendment to the Federal Constitution against double jeopardy applies only to proceedings under the Federal Government; and the second prosecution forbidden thereby is one under authority of the Federal Government after a first trial for the same offense under the same authority.

REGAL DRUG CORPORATION v. JUSTUS S. WARDELL

Supreme Court, December 11, 1922

[260 U. S. 386; 67 L. ed. 318]

Injunction—Against collection of tax—Statutory prohibition.

1. The provision of the United States Revised Statutes that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court does not apply in case of a penalty imposed in the guise of a tax.

Intoxicating liquors—Volstead Act—Imposition of penalty without hearing.

2. Section 35 of the national prohibition act does not empower the Commissioner of Internal Revenue to impose a penalty without notice or hearing for alleged violation of the provisions of the act.

Intoxicating liquors—Tax—Levy under unrepealed law.

3. A penalty can not be imposed under the guise of a tax, without notice or hearing, for alleged unlawful sale of intoxicating liquor, on the theory that it was levied under a tax law not inconsistent with the national prohibition law, which repealed only laws inconsistent with it.

MICHAEL HEITLER v. UNITED STATES—NATHANIEL PERLMAN v. UNITED STATES—FRANK MCCANN v. UNITED STATES—MANDEL GREENBERG v. UNITED STATES—GEORGE F. QUINN v. UNITED STATES

Supreme Court, January 2, 1923

[260 U. S. 438; 67 L. ed. 338]

Statute—Liberal construction—Transfer of appeal or writ of error.

1. The act of Congress of September 14, 1922, providing for transfer to the proper court for an appeal or writ of error inad-

vertently brought before the Supreme Court of the United States is remedial, and should be construed liberally to carry out the evident purpose of Congress; and the fact that the opportunity therein given litigants may at times be abused and unduly prolong litigation and delay the successful party is no reason why the transfer should not be granted when the case comes clearly within the language of the act.

Appeal—Transfer of case to proper court.

2. Where, upon the assumption of the presence of a real constitutional question in the case, a review is sought in the Supreme Court of the United States not only of that question but of other errors assigned on the record, and the Supreme Court finds no constitutional question of sufficient substance to give it jurisdiction to consider the other errors, the complainant is entitled to have the case transferred to the circuit court of appeals of the proper circuit, under the provisions of the act of September 14, 1922.

UNITED STATES *v.* CHRIS ELIOFF STAFFOFF—JAMES L. BROOKS *v.*
UNITED STATES—UNITED STATES *v.* GEORGE REMUS, ET AL.

Supreme Court, January 2, 1923

[260 U. S. 477; 67 L. ed. 353]

Constitutional law—Legislative construction of statute—Retroactive effect.

1. Congress can not by construing a statute as leaving in force a criminal law which the Supreme Court of the United States has declared to have been repealed, give retrospective criminality to acts which were done before passage of the construing statutes, and that were not criminal except for the statutes held to have been repealed.

Intoxicating liquors—Repealing effect of national prohibition act.

2. The national prohibition act repealed, so far as liquor for beverage purposes was concerned, the penalty in Revised Statutes, section 3242, for carrying on the business of rectifier or dealer in intoxicating liquor without having paid the special tax imposed by law, as to all acts which occurred prior to the establishment of the penalty by amendment of the prohibition act, passed November 23, 1921.

Intoxicating liquor—Effect of amendment to national prohibition act to reenact repealed penalties.

3. The provision of the amendment to the national prohibition act passed November 23, 1921, that all laws in regard to the manufacture of, and trafficking in, intoxicating liquor, and all penalties for violation of such laws, which were in force when the national prohibition act was enacted, shall be and continue in force, has the effect of reenacting such laws and penalties.

Intoxicating liquor—Repeal of penalty for possessing still without registration.

4. The penalty provided by Revised Statutes, section 3258, for possessing a still for the manufacture of intoxicating liquor without

registering it with the collector of internal revenue, was repealed by the national prohibition act.

Indictment—For possessing still—Sufficiency.

5. The insertion of the words "and commercial" in an indictment for maintaining a still for the production of spirits for beverage and commercial purposes does not take the case out of the operation of the national prohibition act, repealing the penalty for possessing such still without registering it with the internal-revenue collector.

Criminal law—Failure of indictment—Sentence under repealing statute.

6. In case an indictment for possessing a still for the manufacture of intoxicating spirits without registering it with the collector of internal revenue fails, because of repeal of the statute by the national prohibition act, defendant can not be sentenced under the terms of the repealing act.

CUNARD STEAMSHIP COMPANY *v.* MELLON—OCEANIC STEAM NAVIGATION COMPANY *v.* MELLON—INTERNATIONAL NAVIGATION COMPANY *v.* MELLON—COMPAGNIE GENERALE TRANSATLANTIQUE *v.* MELLON—NETHERLANDS-AMERICAN STEAM NAVIGATION COMPANY *v.* MELLON—LIVERPOOL, BRAZIL & RIVER PLATE STEAM NAVIGATION COMPANY *v.* MELLON—ROYAL MAIL STEAM PACKET COMPANY *v.* MELLON—UNITED STEAMSHIP COMPANY OF COPENHAGEN *v.* MELLON—PACIFIC STEAM NAVIGATION COMPANY *v.* MELLON—NAVIGAZIONE GENERALE ITALIANA *v.* MELLON—INTERNATIONAL MERCANTILE MARINE COMPANY *v.* STUART—UNITED AMERICAN LINES *v.* STUART.

Supreme Court, April 30, 1923

[262 U. S. 100; 67 L. ed. 894]

Intoxicating liquors—Meaning of "transportation" and "importation."

1. The words "transportation" and "importation," as used in the eighteenth amendment to the Federal Constitution, are to be taken in their ordinary sense.

Definitions—"Transportation."

2. The word "transportation" comprehends any real carrying about or from one place to another.

Definitions—"Importation."

3. "Importation" consists in bringing an article into a country from the outside.

Definitions—"Territory."

4. The word "territory," as used in the eighteenth amendment to the Federal Constitution, means the regional area of land and adjacent waters over which the United States claims and exercises dominion and control as a sovereign power.

Intoxicating liquors—Eighteenth amendment—What territory subject to.

5. The territory subject to the jurisdiction of the United States within the meaning of the eighteenth amendment to the Federal Constitution includes the land area under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea, extending from the coast line outward a marine league, or 3 geographic miles.

Intoxicating liquors—Eighteenth amendment—Effect on ships outside territorial waters.

6. The eighteenth amendment to the Federal Constitution does not cover domestic merchant ships outside the waters of the United States.

International law—Ships as part of national territory.

7. The metaphor that a merchant ship is a part of the territory of the country whose flag she flies partakes more of the characteristics of personal than of territorial sovereignty, and is chiefly applicable to ships on the high seas, where there is no territorial sovereign.

Intoxicating liquors—Application of eighteenth amendment to foreign vessels.

8. The eighteenth amendment to the Federal Constitution covers foreign merchant ships when within the territorial waters of the United States.

International law—Jurisdiction over foreign ships.

9. A merchant ship of one country, voluntarily entering the territorial limits of another, subjects herself to the jurisdiction of the latter.

Constitutional law—Implied exceptions to operation.

10. An exception of foreign vessels from the operation of the provisions of the eighteenth amendment to the Federal Constitution when within the territorial waters of the United States would tend to embarrass the enforcement of the amendment and defeat the attainment of its obvious purpose, and therefore can not reasonably be regarded as implied.

Intoxicating liquors—Scope of national prohibition act.

11. The provision in the supplement to the national prohibition act that it shall apply to all territory subject to the jurisdiction of the United States means that its field coincides with that of the eighteenth amendment to the Federal Constitution.

Intoxicating liquors—Effect of exception with respect to Canal Zone.

12. The exception in the national prohibition act of liquor passing through the Panama Canal Zone indicates that where, in other provisions of the act, no exception is made in respect to merchant ships, either domestic or foreign, within the waters of the United States, none is intended.

Intoxicating liquors—Operation of prohibition act.

13. The national prohibition act applies to all merchant vessels, whether domestic or foreign, when within the territorial waters of the United States, except in the Panama Canal Zone, but does not apply to domestic vessels of the United States when outside the territorial waters of the United States.

International law—Power of Congress over domestic vessels in foreign waters.

14. Congress has power to regulate the conduct of merchant ships of the United States when on the high seas, and to exert such control over them when they are in foreign waters as may be affirmatively or tacitly permitted by the territorial sovereign.

Intoxicating liquors—Effect of ancient practice on interpretation of act.

15. The fact that the practice of carrying intoxicating liquors for beverage purposes as part of a ship's sea stores is ancient, of wide

extent, and has received the recognition of Congress, does not indicate that the practice was not intended to be disturbed by the national prohibition act.

Intoxicating liquors—Ship's stores—Status of.

16. That liquors carried on vessels within the territorial waters of the United States are carried only as sea stores does not take them out of the operation of the national prohibition act.

JOHN H. BREDE *v.* JAMES M. POWERS

Supreme Court, October 22, 1923

[263 U. S. 4; 68 L. ed. 132]

Criminal law—What is infamous crime.

1. The test of whether or not a crime is infamous depends upon the punishment which the court has power to inflict, not upon what is actually inflicted.

Statutes—Construction—Place of punishment.

2. The provision of United States Revised Statutes, section 5546, that where there is no penitentiary or jail suitable for confinement of convicts a place may be designated by the Attorney General, is not limited to the cases, provided for by sections 5541, 5542, which mention penitentiaries and jails as places of punishment, but extends to all cases where suitable places of confinement are lacking.

Indictment—Necessity—Violation of prohibition act.

3. A violation of the national prohibition act for which the punishment is imprisonment not exceeding six months, which is not to be at hard labor, is not an infamous crime for the prosecution of which indictment or presentment by the grand jury is necessary.

Criminal law—Hard labor as part of prison discipline—Effect on character of crime.

4. Imprisonment in a jail the discipline of which requires or permits the imposition of hard labor does not constitute the offense an infamous crime where the statute does not authorize the requirement of hard labor as part of the punishment.

Criminal law—Allowing suitable employment—Effect.

5. Committing the administration of a law for prison government to the judgment of the freeholders of a county, with power to prescribe suitable employment of prisoners to accomplish the purpose of the law does not require imprisonment at hard labor, so as to make crimes punishable by imprisonment therein infamous.

THOMAS A. DELANEY *v.* UNITED STATES

Supreme Court, January 21, 1924

[263 U. S. 586; 68 L. ed. 462]

Judges—Statutory disqualification of appellate judge—When applicable.

1. The provision of section 120 of the Judicial Code, that no judge before whom a cause or question may have been tried or heard

in a district court shall sit on the hearing of such a cause or question in the circuit court of appeals, does not apply to render incompetent a judge by whom no question before the circuit court of appeals has been considered, although he had some connection with the case in the trial court.

Appeal—To Supreme Court—Effect of verdict.

2. Something more than ingenious criticism is necessary to overthrow a judgment in the Supreme Court of the United States on the ground that it is not supported by the testimony, where the finding has been approved by the district court and the circuit court of appeals.

Appeal—Admission of hearsay evidence—Error.

3. The admission of hearsay evidence against objection is reversible error, as depriving accused of the constitutional right to be confronted with the witnesses against him.

Appeal—Admission of declaration of conspirator.

4. The admission on a prosecution for conspiracy of testimony by one conspirator of what another of them, since dead, told him during the progress of the conspiracy, is not reversible error.

UNITED STATES *v.* JOHN VALANTE

Supreme Court, April 21, 1924

[264 U. S. 563; 68 L. ed. 850]

Habeas corpus—Sentence imposed by judge who did not preside at trial.

1. Habeas corpus does not lie to release from custody one convicted of a misdemeanor because the verdict was received and sentence imposed by a judge other than the one who presided at the trial.

Habeas corpus—As proceeding in error.

2. A writ of habeas corpus can not be utilized for the purpose of proceedings in error.

CHARLIE HESTER *v.* UNITED STATES

Supreme Court, May 5, 1924

[265 U. S. 57; 68 L. ed. 898]

Evidence—Liquor taken without warrant—Unlawful search.

1. The fourth and fifth amendments to the Federal Constitution do not exclude evidence as to the contents of receptacles which officers saw in possession of one accused of concealing distilled spirits, and of his companion, in an open field, and which such persons dropped and broke when pursued by the officers.

Search—Protection to person in open field.

2. The protection extended by the fourth amendment to the Federal Constitution of security in person, houses, papers, and effects, does not extend to open fields.

MERLIN W. HIXSON *v.* LOUIS D. OAKES

Supreme Court, May 26, 1924

[265 U. S. 254; 68 L. ed. 1005]

Intoxicating liquor—Validity of municipal ordinance affecting prescriptions.

1. A municipal ordinance prohibiting a pharmacist from filling a prescription calling for more than 8 ounces of alcoholic liquor is not in conflict with the eighteenth amendment to the Federal Constitution or the Volstead Act.

Constitutional law—Due process—Right to dispense intoxicating liquor.

2. The Volstead Act confers no right upon a pharmacist to dispense intoxicating liquor for which he may claim protection under the fourteenth amendment to the Federal Constitution.

A. P. KENNEDY ET AL. *v.* UNITED STATES

Supreme Court, May 26, 1924

[265 U. S. 344; 68 L. ed. 1045]

Intoxicating liquors—Possession in Indian country—Effect of national prohibition act.

The provision of the act of 1892, and its amendments of 1897 and 1918, making criminal possession of intoxicating liquor in Indian country, were not repealed by the national prohibition act.

WALDEMAR GNERICH ET AL. *v.* S. F. RUTTER

Supreme Court, June 2, 1924

[265 U. S. 388; 68 L. ed. 1068]

Parties—Suit to enjoin enforcement of restriction in liquor permit—Commissioner of Internal Revenue.

1. The Commissioner of Internal Revenue should be a party to a proceeding to enjoin the enforcement of a restriction in a permit to sell intoxicating liquor for other than beverage purposes.

Appeal—Absence of necessary party—Effect.

2. A decree on the merits should not be affirmed where it was rendered in the absence of a necessary party.

JAMES EVERARD'S BREWERIES *v.* RALPH A. DAY—EDWARD AND JOHN BURKE *v.* DAVID H. BLAIR

Supreme Court, June 9, 1924

[265 U. S. 545; 68 L. ed. 1174]

Congress—Means of enforcing Constitution.

1. In the exercise of its discretion as to means of carrying into execution powers conferred by the Constitution, Congress may adopt

any means appearing to it most eligible and appropriate which are adapted to the end to be accomplished and consistent with the letter and spirit of the Constitution.

Courts—Inquiry into means of enforcing Constitution.

2. When means adopted by Congress for carrying into effect a constitutional provision are not prohibited, or are calculated to effect the object intrusted to it, the Supreme Court of the United States will not inquire into the degree of their necessity nor the wisdom of the legislation.

Constitutional law—Limiting medicinal prescriptions to spirituous and vinous liquors.

3. To aid in carrying into effect the provision of the eighteenth amendment to the Federal Constitution Congress has authority to limit prescriptions for medical purposes to spirituous and vinous liquors.

Constitutional law—Due process—Forbidding dispensing of malt liquor.

4. Prohibiting the dispensing of large quantities of intoxicating liquor in the hands of the manufacturer or importer by the passage of a statute limiting prescriptions for medical purposes to spirituous and vinous liquors does not take the property of the manufacturer or importer without due process of law, contrary to the provisions of the Federal Constitution.

GEORGE CARROLL & KIRO v. UNITED STATES

Supreme Court, March 2, 1925

[267 U. S. 132; 69 L. ed. 543]

Search and seizure—Effect of fourth amendment.

1. The search, without warrant, of an automobile engaged in the illegal transportation of intoxicating liquor is not prohibited by the fourth amendment to the Federal Constitution.

Search and seizure—When valid without warrant.

2. If a search and seizure without warrant are made upon probable cause, that is, upon the belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which, by law, is subject to seizure and destruction, the search and seizure are valid.

Constitutional law—Construction—Search and seizure.

3. The fourth amendment to the Federal Constitution is to be construed in the light of what was deemed to be an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as interests and rights of individual citizens.

Search and seizure—On international boundary.

4. Travelers crossing an international boundary may be stopped and their vehicle searched without warrant, because of national self-protection reasonably requiring one entering a country to iden-

tify himself as entitled to come in, and his belongings as effects which may be lawfully brought in.

Search and seizure—Right to undisturbed passage on highways.

5. Those lawfully within the United States, entitled to use the public highways, have a right to free passage without interruption or search, unless there is known to a competent officer authorized to search probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

Search and seizure—What determines right.

6. The rule for determining what may be required before a seizure may be made by a competent seizing officer for unlawful transportation of intoxicating liquor does not depend on the character of the penalty to which the transporter may be subjected.

Officers—Liability for wrongful seizure.

7. If an officer seizes an automobile or the liquor in it without a warrant, and the facts, as subsequently developed, do not justify a judgment of condemnation or forfeiture, the officer may, under the provisions of the United States Revised Statutes, section 970, escape costs or a suit for damages by a showing that he had reasonable or probable cause for seizure.

Search and seizure—Of automobile—When legal.

8. The seizure, without warrant, of an automobile for the illegal transportation of intoxicating liquor is legal if the seizing officer has reasonable or probable cause for belief that there is contraband liquor therein which is being illegally transported.

Search and seizure—Necessity and effect of warrant.

9. Where the securing of a warrant before seizure of property being transported on a highway is reasonably practicable it must be secured, and, when properly supported by affidavits and issued after judicial approval, it protects the seizing officer against a suit for damages.

Arrest—Without warrant—When legal.

10. Generally, a police officer may arrest without warrant one believed by him, upon reasonable cause, to have been guilty of felony, and he may arrest without warrant one guilty of misdemeanor only if it is committed in his presence.

Criminal law—Discretion as to classification of offenses.

11. Congress may exercise a relatively wide discretion in classifying particular offenses as felonies or misdemeanors.

Search and seizure—Right to act on previous information.

12. Under the provision of the national prohibition law authorizing an officer to seize liquor when he discovers any person in the act of transporting it in violation of law, it is not necessary that he learn of the unlawful transportation by the present evidence of his senses, but he may act on identification of a car which he has been previously informed is engaged in such transportation.

Search and seizure—Property in possession of one under arrest.

13. When a man is legally arrested for an offense, what is found upon his person, or in his control, which it is unlawful for him to

have, and which may be used to prove the offense, may be seized and held as evidence in the prosecution.

Search and seizure—Necessity of right to arrest.

14. The right to search for and seize, without warrant, intoxicating liquor being transported along a public highway, does not depend upon the right to arrest the one in charge of it.

Evidence—Judicial notice—Location and activities of cities.

15. The court takes judicial notice of the fact that Grand Rapids is about 152 miles from Detroit, and that Detroit is one of the most active centers for introducing illegally into this country spirituous liquors for distribution into the interior.

Search and seizure—What is probable cause.

16. Officers engaged in patrolling for seizure of contraband liquor a highway along which liquor is transported may seize and search, without warrant, an automobile of persons whom they knew, or have convincing evidence to make them believe, are plying the unlawful trade of transporting and selling such liquor, and which is the same car which they used in trying to fill an order for liquor, to the officers themselves a short time before, and is, at the time, coming from known sources of liquor supply, and it is immaterial that the officers were not looking for them at the time, and that the liquor was so concealed as not to be evident to the sense of the officers.

Evidence—Property seized without warrant—Effect of showing at trial.

17. If the evidence at the trial is sufficient to justify refusal to return property seized without warrant, it may be introduced in evidence, although the evidence may have been insufficient to warrant such refusal when application was made for the return.

SIG SAMUELS *v.* J. A. McCURDY

Supreme Court, March, 2, 1925

[267 U. S. 188; 69 L. ed. 568]

Intoxicating liquor—Prohibiting future possession—Ex post facto law.

1. A statute making possession of liquor lawfully acquired unlawful is not ex post facto so far as it affects continued possession in the future.

Constitutional law—Making illegal possession of liquor lawfully obtained.

2. Making unlawful the possession of intoxicating liquor which was legally obtained before the passage of the prohibition law does not unconstitutionally deprive the owner of his property without due process of law.

Intoxicating liquor—Power of State to prohibit use.

3. The State has the power to subject those members of society who might indulge in the use of intoxicating liquor without injury to themselves to a deprivation of access to liquor in order to remove temptation from those whom its use would demoralize, and to avoid the abuses which follow in its train.

Constitutional law—Necessity of compensation for liquor destroyed.

4. The State may, without compensation, seize and destroy liquor the use of which is made unlawful, although it was lawfully obtained before the passage of the prohibition act.

Constitutional law—Due process—Destruction of liquor without hearing.

5. Failure to accord a hearing to the owner before the seizure and destruction of intoxicating liquor, the possession of which is made unlawful, does not deprive him of his property without due process of law, at least, if he can secure a hearing by instituting injunction proceedings to prevent the destruction.

Pleading—Demurrer—Effect of absence of allegations.

6. On demurrer to a petition to prevent the destruction of liquor by the sheriff, which contains no averments of intention to depart from the requirements of the applicable statute, absence of such intention must be assumed.

EX PARTE IN THE MATTER OF THE APPLICATION OF PHILIP GROSSMAN

Supreme Court, March 2, 1925

[267 U. S. 87; 69 L. ed. 527]

Constitutional law—Construction—Effect of common law.

1. The language of the Constitution can not be interpreted safely except by reference to the common law and to British institutions as they were when the instrument was framed and adopted.

Pardon—Power of President—Criminal contempt.

2. The pardoning power of the President under the Federal Constitution extends to criminal contempts of court.

JOHN F. STEELE *v.* UNITED STATES

Supreme Court, April 13, 1925

[267 U. S. 498; 69 L. ed. 757]

Search and seizure—Sufficiency of description of place.

1. A description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended.

Search and seizure—Description of place having two street numbers.

2. A description for a search warrant of a place consisting of a building with two street numbers, the ground floor of which is used as a garage and the upper floors for storage purposes, as a garage, and for business purposes, specifying one of the street numbers, is sufficient if the entire building is served by one elevator, the rooms above both numbers having access to it.

Search and seizure—What may be searched under warrant.

3. Under a search warrant authorizing the search of a building used as a garage, located on the first floor of the building containing two street numbers, and "any building or rooms used in connection with said garage" will justify the search of rooms on the upper floors of the building used for storage purposes and connected with the garage by elevator.

Search and seizure—Occupation of room by employee.

4. A building used as a garage and for storage purposes can not be given the character of a dwelling house, so as not to be subject to search under the Federal prohibition act, by permitting an employee to sleep and cook in a room on one of the floors of the building.

Search and seizure—Sufficiency of description of the property to be seized.

5. A warrant for search of premises for cases of whisky is sufficient to justify the seizure of whisky in cases, bottles, bags, jugs, and barrels.

Search and seizure—Sufficiency of probable cause.

6. Sufficient probable cause for issuance of a search warrant exists where an experienced man sees cases labeled "whisky" being unloaded from a dray into a building for the storage of whisky in which, according to the official records, no permit exists.

JOHN F. STEELE *v.* UNITED STATES

Supreme Court, April 13, 1925

[267 U. S. 505; 69 L. ed. 761]

Evidence—Right to exclude information gained by search warrant.

1. That the person to whom a search warrant is issued was not a civil officer of the United States, as required by the Federal prohibition act, can not avail to exclude evidence gained by execution of the warrant in a prosecution for illegally possessing intoxicating liquor, where the question was not raised in the proceeding to secure return of the property seized, and no error was assigned because of such fact, in the appellate court, in such proceeding.

Search and seizure—Who may execute warrant—Prohibition agent.

2. The term "civil officer" to whom a search warrant may issue under the Federal prohibition act is not confined to such officer in the constitutional sense, and therefore the warrant may be executed by a general prohibition agent, who is a mere appointee of the Commissioner of Internal Revenue.

Officer—Who is.

3. The words "officer of the United States," when used in statutes of the United States, are to be taken usually as having the limited constitutional meaning.

Judgment—Probable cause for search warrant—*Res judicata*.

4. Refusal of the court to direct a return of property seized under a search warrant over the objection that the warrant issued without

probable cause is *res judicata* in a subsequent prosecution against the one from whose premises the property was taken for its illegal possession.

Trial—Question for court—Legality of search warrant.

5. The question whether or not evidence secured by means of a search warrant is admissible in a criminal prosecution by reason of the legality or otherwise of its seizure is a question of fact and law for the court, and can not be submitted to the jury for its determination.

DOMENICO DUMBRA *ET AL.* *v.* UNITED STATES

Supreme Court, May 25, 1925

[268 U. S. 435; 69 L. ed. 1032]

Search and seizure—Who may execute search warrant.

1. A search warrant under the national prohibition act may be executed by a prohibition agent regularly appointed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury.

Intoxicating liquor—Effect of Government license to manufacture.

2. A Government permit to manufacture wine for nonbeverage purposes does not authorize possession of intoxicating liquors for beverage purposes, and affords no protection to one possessing such liquors with intent to use them in violation of the national prohibition act.

Search and seizure—Showing probable cause for warrant.

3. If probable cause is shown for the search of premises upon which wine may be manufactured under Government license for nonbeverage purposes, for intoxicating liquor possessed on such premises with intent to violate the national prohibition act, the warrant for search of the premises and seizure of the liquors may be lawfully issued.

Search and seizure—Sufficiency of affidavit of probable cause.

4. Probable cause for the search of property operated under Government license for the manufacture of wine for nonbeverage purposes, for liquors possessed with intent to violate the national prohibition act, is shown by an affidavit that affiant saw the sale by members of the family of the owner of the suspected premises without inquiry as to the right to purchase, on premises adjoining those licensed, of wine containing more than one-half of 1 per cent of alcohol, to persons having no permit to purchase it, and that the wine was apparently procured by the salesmen from the licensed premises.

Search and seizure—When probable cause exists.

5. If the apparent facts set out in an affidavit for a search warrant are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a search warrant.

MEYER SELZMAN v. UNITED STATES

Supreme Court, June 1, 1925

[268 U. S. 466; 69 L. ed. 1054]

Intoxicating liquor—Power of Congress with respect to.

1. The power of the Federal Government, granted by the eighteenth amendment to the Constitution, to enforce the prohibition of the manufacture, sale, and transportation of intoxicating liquors, carries with it power to enact any legislative measures reasonably adapted to promote that purpose.

Intoxicating liquor—Regulation of distribution of denatured alcohol.

2. Congress has power, under the provisions of the eighteenth amendment to the Constitution, to regulate the manufacture and distribution of completely denatured alcohol, although it is not fit for beverage purposes.

TERRENCE DRUGGAN v. PALMER E. ANDERSON

Supreme Court, October 19, 1925

[269 U. S. 36; 70 L. ed. 151]

Constitutional law—When amendment becomes operative.

1. The moment an amendment to the Federal Constitution is ratified, it becomes effective as law, although the acts against which it is directed are prohibited only after expiration of a year from its ratification.

Statute—Effect of enactment before constitutional amendment becomes effective.

2. The national prohibition act, which was adopted after the ratification of the eighteenth amendment to the Federal Constitution, is not invalid because enacted before the time when the prohibitory provisions of that amendment became effective.

Injunction—Issued without notice—Validity.

3. That a temporary injunction against a liquor nuisance is issued without the notice required by rule of court and statute governing such matters does not render it void, since the national prohibition act provides that if it appears that a nuisance exists, a temporary injunction shall issue forthwith.

STATE OF MARYLAND v. MORRIS A. SOPER

Supreme Court, February 1, 1926

[270 U. S. 9; 70 L. ed. 449]

Courts—Jurisdiction—District court.

1. The district court of the United States has jurisdiction of an issue on the interpretation of the facts and the application of a Federal statute permitting the removal to it from a State court of a

prosecution against a Federal officer on account of an act done under color of his office.

Mandamus—Supreme Court of the United States—When lies.

2. Mandamus does not lie from the Supreme Court of the United States to inferior Federal courts in civil cases to compel a reversal of decision, either interlocutory or final, made in the exercise of lawful jurisdiction, especially where in the regular course the decision may be reviewed upon writ of error or appeal.

Mandamus—Discretion in issuing.

3. The Supreme Court of the United States exercises a sound discretion in granting or withholding a writ of mandamus to compel a Federal court to remand to a State court a prosecution against a Federal officer removed to it, and should be more liberal in the use of the writ than in case of the removal of civil cases.

Mandamus—To compel return of prosecution to State court.

4. That the district court of the United States may be proceeding in the exercise of a lawful jurisdiction in removing to itself for trial a prosecution against a Federal officer for violation of State laws should not prevent the Supreme Court of the United States from granting to the State a writ of mandamus to compel the return of the prosecution to the State court for trial.

Removal of cause—Prosecution against Federal prohibition agent.

5. Agents of the Federal prohibition director are, in searching for a still for the purpose of preventing violation of a Federal statute forbidding the making of spirits in any other than a distillery authorized by law, within the protection of a statute authorizing the removal to a Federal court for trial of any prosecution against an officer acting under authority of any revenue law of the United States, although the statute does not apply to prohibition agents when acting as such.

Removal of cause—Right of Federal prohibition agent.

6. The provisions of section 28, Title 11, of the national prohibition act, giving the commissioner, his assistants, agents, and inspectors all the protection in the enforcement of the act which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquor under the laws of the United States, gives them the benefit of the statute permitting the removal of prosecutions for acts committed in the performance of their duties from State to Federal courts for trial.

Removal of cause—Necessity of admission of offense.

7. To justify a removal of the prosecution of a Federal prohibition agent from a State to a Federal court for trial it is not necessary that the officer admit the act upon which the prosecution is founded, but it is enough that his admitted acts or his presence at the locus in quo in the performance of his official duties constitute the basis, though mistaken or false, of the State prosecution.

Removal of cause—Prosecution for homicide—Necessity of showing commission of act.

8. A Federal prohibition officer may have a prosecution against him for murder of one found dead near where he was engaged in

destroying an illicit still removed from the State to the Federal court for trial, although the facts disclosed do not show that he committed the act of homicide upon which the prosecution is founded.

Removal of cause—What must be shown to secure removal.

9. A Federal prohibition officer prosecuted in a State court for crime alleged to have been committed by him must, to secure the right to remove the cause to a Federal court for trial, establish fully and fairly by the allegations of his petition for removal that he was immune from punishment by the State because what he did was justified by his duty under the Federal law.

Removal of cause—Sufficiency of petition.

10. A petition by Federal prohibition agents to remove to a Federal court for trial a prosecution against them for murder is not sufficient, which states that the acts alleged to have been done by them are alleged to have been done at a time when they were engaged in the discharge of their official duties as Federal prohibition officers, and in making and attempting to make an investigation concerning a violation of the national prohibition act and other internal-revenue laws, and in reporting the results of said investigation, and in protecting themselves in the discharge of their duty, that the prosecution is on account of acts alleged to have been done by petitioners at a time when they were engaged in the performance of their duties as Federal prohibition agents, without anything to show that they were not doing other than official acts at the time, or that the acts done leading to the prosecution were done under color of their official duties.

Removal of cause—What petition must show.

11. A Federal officer seeking to remove a prosecution against him from a State to a Federal court for trial should be candid, specific, and positive in explaining his relation to the transaction for a crime growing out of which he has been indicted, and in showing that his relation to it was confined to his acts as such officer.

STATE OF MARYLAND v. MORRIS A. SOPER

Supreme Court, February 1, 1926

[270 U. S. 36; 70 L. ed. 459]

Removal of cause—Conspiracy to withhold facts concerning crime.

1. The responses of Federal prohibition officers to questions relating to a crime which they are suspected of having committed are not made under their Federal authority so as to permit the removal to a Federal court for trial of an indictment charging conspiracy to deceive by withholding facts concerning the crime, and falsely asserting ignorance thereof, in order to induce the return of a false and erroneous verdict by the coroner's jury.

Removal of cause—What prosecutions removable.

2. Removals of prosecutions on account of acts done in enforcement of the revenue or prohibition laws, or under color of them,

properly include those for acts committed by a Federal officer in defense of his life, threatened while enforcing or attempting to enforce the law.

Mandamus—To compel return of indictment to State court.

3. Mandamus lies to compel the return to a State court for trial, by the Federal court to which it has been removed, of a prosecution charging Federal prohibition officers with obstructing justice by false testimony in attempting to deceive the coroner's jury, which was inquiring into a murder of the commission of which they were suspected, by withholding facts concerning the death, and falsely asserting ignorance thereof, in order to induce the return of a false and erroneous verdict by the jury.

STATE OF MARYLAND v. MORRIS A. SOPER

Supreme Court, February 1, 1926

[270 U. S. 44; 70 L. ed. 462]

Removal of cause—Charge of perjury against Federal prohibition officer.

1. An indictment for perjury against a Federal prohibition officer for falsely stating that he had not seen a person with whose murder prohibition agents were charged, while he was concealed and hidden to watch proceedings with respect to an illicit still, is not removable under the provision of the Judicial Code authorizing the removal of prosecutions against Federal officers on account of any act done under color of their office.

Mandamus—To compel return of cause to State court.

2. Mandamus lies to compel the return to the State court of a prosecution for perjury committed by a Federal prohibition agent in denying having seen a person found dead near where such agents were engaged in destroying an illicit still, while he was engaged in watching operations about the still, which prosecution has been removed to a Federal court for trial.

UNITED STATES v. JACOB KATZ AND GEORGE SENN—UNITED STATES v. JACOB KATZ AND HERMAN FEUERSTEIN

Supreme Court, May 24, 1926

[271 U. S. 354; 70 L. ed. 986]

Statutes—Construction—Literal application avoided.

1. All laws are to be given a sensible construction, and a literal application of a statute which would lead to absurd consequences should be avoided whenever a reasonable application can be given to it consistently with the legislative purpose.

Statutes—Construction—What considered.

2. In ascertaining the purpose of the legislature in enacting a statute the court may examine the title of the statute, the source in

previous legislation of the particular provision in question, and the legislative scheme or plan by which the general purpose of the act is to be carried out.

Intoxicating liquors—Purpose of prohibition act.

3. One purpose of the national prohibition act was to suppress the entire traffic in intoxicating liquor as a beverage; another was to regulate the manufacture, transportation, and use of such liquor for other than beverage purposes.

Intoxicating liquor—Who required to keep records of sales.

4. The record of sales of intoxicating liquor, provided for by sections 10 and 34 of Title II of the national prohibition act, was required of persons permitted to make sales only, and not to persons attempting to make unlawful sales.

Statutes—Criminal—Construction—Limited application.

5. General terms descriptive of a class of persons made subject to a criminal statute may, and should, be limited, where the literal application of the statute would lead to extreme or absurd results, and where the legislative purpose, gathered from the whole act, would be satisfied by a more limited interpretation.

UNITED STATES *v.* ZERBEY ET AL.

Supreme Court, May 24, 1926

[271 U. S. 332; 70 L. ed. 973]

Intoxicating liquor—Bond given by permittee—Indemnity and not forfeiture bond.

Bond on Form 738, given by permittee under national prohibition act, Title II, section 6, and conditioned that principal would fully and faithfully comply with all requirements of laws of United States respecting sale and use of distilled spirits, held not a forfeiture bond, but a bond of indemnity, the face of which was the limit of liability, in view of Title II, sections 29 and 35, of the national prohibition act, and Forms 738A, 1408, 1409, and regulations pursuant to which they were issued.

EPHRIAM LEDEBER *v.* MARY A. MCGARVEY

Supreme Court, May 24, 1926

[271 U. S. 342; 70 L. ed. 977]

Cases certified—Dismissal of certified question.

A certificate by the Circuit Court of Appeals presenting questions for the Supreme Court of the United States will be dismissed where, because of concessions of the parties, an answer to the questions, which would avail nothing, is not required.

MA-KING PRODUCTS CO. *v.* BLAIR

Supreme Court, June 1, 1926

[271 U. S. 479; 70 L. ed. 1046]

Intoxicating liquor—Extent of review of denial of permit.

1. The provision in the national prohibition act that the refusal of the commissioner to grant a permit for the handling of intoxicating liquor may be reviewed by a court of equity merely gives the court authority to determine whether upon the facts and the law the action of the commissioner is based upon an error of law, or is wholly unsupported by the evidence, or clearly arbitrary and capricious.

Intoxicating liquor—Discretion of Commissioner of Internal Revenue.

2. Under national prohibition act, Title II, sections 1-39, Commissioner of Internal Revenue exercises discretion in the granting of permits to operate denaturing plants, and refusal of permit to company whose managing officers had been associated in business with men whose conduct had already invited prohibition prosecutions against them held not improper.

RAFFEL *v.* UNITED STATES

Supreme Court, June 1, 1926

[271 U. S. 494; 70 L. ed. 1054]

Witnesses.

1. Immunity from giving testimony is one which defendant may waive by offering himself as a witness.

Witnesses—Cross-examination of accused.

2. When defendant takes the stand in his own behalf, he does so as any other witness, and within the limits of appropriate rules he may be cross-examined as to the facts in issue.

Criminal law—Trial.

3. Questions asked by court of defendant taking stand on second trial as to his failure to offer himself as witness in first trial held relevant and competent.

Criminal law—Evidence—Inconsistent conduct.

4. Requiring defendant, offering himself as witness on second trial, to disclose he had not testified as witness in his own behalf on first trial, held not violative of constitutional amendment 5, or act March 16, 1878.

DORAS HEBERT ET AL. *v.* STATE OF LOUISIANA

Supreme Court, November 1, 1926

[272 U. S. 312; 71 L. ed. adv. 111]

Intoxicating liquors—Prosecution, for violation of eighteenth amendment, in both Federal and State court.

1. Under the provisions of the eighteenth amendment to the Federal Constitution, one may be prosecuted both in the Federal

and in the State court for an offense which constitutes a violation of both the Federal and the State law.

Courts—Jurisdiction—Violations of State prohibitory law.

2. A prosecution for violation of a State statute declaring the manufacture of intoxicating liquor for beverage purposes an offense is not, since the enactment of the eighteenth amendment to the Federal Constitution, cognizable under the authority of the United States, within the meaning of section 256 of the Federal Judicial Code giving Federal courts exclusive jurisdiction in cases so cognizable.

Arrest—Party under bail in Federal court.

3. In the absence of objection on the part of the Federal Government, the fact that persons accused of violating State statutes are on bail awaiting trial in a Federal court for violation of a Federal statute presents no obstacle to their arrest under the process of a State court as a means of acquiring jurisdiction of their persons.

Courts—Conclusiveness of State decisions.

4. Whether or not one State statute excludes another, or both are to be construed together, is a matter of State law on which the decision of the State is controlling on the Federal courts.

Constitutional law—Due process—Test of State statutes.

5. The due process of law clause in the fourteenth amendment of the Federal Constitution does not make the statutes of the several States the test of what it requires.

Constitutional law—Jurisdiction of Supreme Court of United States.

6. The due process of law clause of the fourteenth amendment to the Federal Constitution does not enable the Supreme Court of the United States to revise decisions of State courts on questions of State law.

Constitutional law—Requirement of the fourteenth amendment.

7. The fourteenth amendment to the Constitution of the United States requires that State action shall be consistent with the fundamental principles of liberty and justice which lie at the basis of all our civil and political institutions.

Courts—Jurisdiction—Operation of State statutes.

8. All that the Supreme Court of the United States has jurisdiction to decide, when a State court construes two statutes together in determining the extent of the penalty to be imposed for violation of a State statute, is whether under the due-process clause of the Federal Constitution, the State has power to impose the penalty under the statute as thus construed.

STELLA VAN OSTER v. STATE OF KANSAS

Supreme Court, November 22, 1926

[272 U. S. 465; 71 L. ed. adv. 143]

Constitutional law—Forfeiture of property intrusted to another—Due process.

1. The owner of an automobile who intrusts it to another with authority to make use of it is not deprived of his property without due process of law by a statute authorizing its forfeiture, if it is used

by the bailee in the unlawful transportation of intoxicating liquor, although such use is without the knowledge or consent of the owner.

Intoxicating liquor—State statute broader than Federal act—Validity.

2. A State statute providing for the forfeiture of vehicles engaged in the unlawful transportation of intoxicating liquor is not invalid because broader in its scope than the national prohibition act.

Courts—Effect of State decision.

3. The Supreme Court of the United States is bound by the decision of the State court as to the effect upon the right to forfeit an automobile alleged to have been employed in the unlawful transportation of intoxicating liquor of the acquittal of the one in possession of it upon such charge.

Jury—Dispensing with—Constitutionality of statute.

4. A statute dispensing with a jury trial in a proceeding to forfeit an automobile for unlawful transportation of intoxicating liquor is not unconstitutional.

UNITED STATES v. ONE FORD COUPE AUTOMOBILE

Supreme Court, November 22, 1926

[272 U. S. 321; 71 L. ed. adv. 180]

Internal revenue—Forfeiture of automobile—Seizure by prohibition agent.

1. That an automobile was seized by a prohibition director instead of by an internal revenue officer does not prevent its forfeiture for violation of the internal revenue act.

Internal revenue—Tax on illicit liquor.

2. Congress has power to tax intoxicating liquor illicitly made.

Internal revenue—Effect of prohibition act on forfeiture provision of revenue act.

3. In view of the provision of section 35 of the national prohibition act that the act shall not relieve anyone from paying any tax or other charges imposed upon the manufacture or traffic in such liquor, or the Willis-Campbell Act continuing in force all laws in regard to the taxation of intoxicating liquor not directly in conflict with the prohibitory legislation, the provision of United States Revised Statutes, section 3450, for the forfeiture of vehicles engaged in transporting liquor upon which the tax has not been paid, applies in cases of transportation of illicit liquor.

Internal revenue—Failure to provide tax—Effect.

4. The intention not to continue in force the taxation on intoxicating liquor after the enactment of the prohibition law is not indicated by the fact that stamps for such payment are no longer obtainable, and that no officer is authorized to receive payment.

Conflict of laws—Tax on prohibited liquors.

5. A law which imposes a tax on intoxicating liquor, whether legally or illegally made, is not in conflict with another law which prohibits the making of such liquor.

Taxes—Effect of use of word "tax."

6. The use of the word "tax" in imposing a financial burden does not prove conclusively that the burden imposed is a tax.

Taxes—When become penalty.

7. A tax on intoxicating liquor does not cease to be such and become a penalty because the sovereign has declared that none shall be manufactured, and because the main purpose in retaining the tax is to make lawbreaking less profitable.

Constitutional law—Forfeiture to enforce penalty—Validity.

8. There is no constitutional objection to enforcing a penalty by forfeiture of the offending article.

Internal revenue—When vehicle subject to forfeiture.

9. If the intent to defraud the United States of the tax upon intoxicating liquor by its transportation in a vehicle is established by any competent evidence, the use of the vehicle for the purpose of concealment meets the requirement of United States Revised Statutes, section 3450, authorizing forfeiture, even if it appears that the offender obtained it not from a distiller, bonded warehouse, or importer, but from a stranger.

Internal revenue—Repeal by prohibition act.

10. United States Revised Statutes, section 3450, providing for the forfeiture of vehicles employed to evade an internal-revenue tax, is not so in conflict with section 26 of the prohibition law, which applies to vehicles used in transporting liquor contrary to law, as to be repealed so far as the question of forfeiture for transportation of intoxicating liquor is concerned, by the latter act.

Statutes—Implied repeal—Rules for determining.

11. In the absence of conflict resulting from differences in the scope and purposes of statutes, the claim of implied repeal must rest upon essential conflict incident to the prescribed methods of their operation.

Internal revenue—Forfeiture of vehicle—Modification of law.

12. United States Revised Statutes, section 3450, was not modified by section 26 of the prohibition act, so as to prevent forfeiture of the interest of one having no guilty knowledge of use of a vehicle for an illegal purpose for such offense.

Election of remedies—Proceeding to forfeit vehicle for use in transporting intoxicating liquor.

13. A proceeding to forfeit an automobile for illegal use in the transportation of intoxicating liquor can not be said to have been under section 26 of the prohibition act, so as to include forfeiture under United States Revised Statutes, section 3450, applicable to violation of the revenue laws, where there is no allegation that the vehicle was discovered in the act of transporting liquor or that the one in possession of it had ever been prosecuted.

Pleading—Motion to quash libel—How determined.

14. A motion to quash a libel for forfeiture of a vehicle for use in connection with the illegal concealment of intoxicating liquor must be determined by the showing in the libel.

PORT GARDNER INVESTMENT CO. v. UNITED STATES

Supreme Court, November 23, 1926

[272 U. S. 564; 71 L. ed. adv. 193]

Election of remedies—Prosecution for unlawful transportation of intoxicating liquor—Forfeiture of automobile.

The prosecution with effect under section 26 of the national prohibition act, of one charged with illegal transportation of intoxicating liquors, precludes a proceeding for forfeiture of the automobile which he was using under United States Revised Statutes, section 3450, in view of section 5 of the Willis-Campbell Act, which provides that a conviction under one law will bar a prosecution under the other.

WILLIAM EARL DODGE v. UNITED STATES

Supreme Court, November 23, 1926

[272 U. S. 530; 71 L. ed. adv. 212]

Intoxicating liquors—Forfeiture—Seizure by State officials.

1. The seizure by State police officers of property employed in the unlawful transportation of intoxicating liquors, although not authorized by section 26 of the Federal prohibition act, may be adopted by the Federal Government so as to justify a forfeiture.

Courts—Jurisdiction—Forfeiture—Possession of res.

2. The court has jurisdiction of a proceeding to forfeit a vehicle for illegal transportation of intoxicating liquor if the res was in possession of a prohibition director when the libel was filed.

SAMUEL W. LAMBERT v. YELLOWLEY ET AL.

Supreme Court, November 29, 1926

[272 U. S. 581; 71 L. ed. adv. 240]

Intoxicating liquors—Power to limit for medicinal purposes.

1. The provision of the eighteenth amendment to the Federal Constitution endowing Congress with the power to enforce prohibition by appropriate legislation empowers it to limit the amount of liquor which may be prescribed for medicinal purposes.

Intoxicating liquor—Restricting prescription to pint—Validity.

2. Restricting prescriptions by physicians of intoxicating liquor to not to exceed a pint for use by the same person within any period of 10 days can not, in view of the diverging opinions of physicians as to the medicinal value of such liquor, be regarded as arbitrary or without a reasonable basis, and is an admissible measure for enforcing the prohibition obtained by the eighteenth amendment to the Federal Constitution.

Constitutional law—Right to practice medicine—Police power.

3. There is no right to practice medicine which is not subordinate to the police power, and also to the power of Congress to make laws necessary and proper for carrying into execution the eighteenth amendment to the Federal Constitution.

Constitutional law—Interference by Congress with police power of State.

4. When the United States exerts any of the powers conferred upon it by the Constitution, valid objection can be based upon the fact that such exercise may be attended by some or all of the incidents which attend the exercise by a State of its police power.

THOMAS MURPHY AND VINCENT MURPHY v. UNITED STATES

Supreme Court, December 6, 1926

[272 U. S. 630; 71 L. ed. adv. 255]

Judgment—Acquittal of crime—Effect on suit for injunction.

Acquittal in a prosecution for maintaining a liquor nuisance in violation of section 21, title 2, of the national prohibition act is not a bar to a suit in equity to abate an alleged nuisance under section 22 of the act.

JOHN E. MCGUIRE v. UNITED STATES

Supreme Court, January 3, 1927

[273 U. S. 95; 71 L. ed. adv. 292]

Evidence—Liquor found under search warrant—Effect of wrongful destruction of other liquor.

The illegal act of officers acting under a search warrant, in destroying intoxicating liquor found upon the premises searched, does not make their search so far void ab initio as to make inadmissible in evidence, in a prosecution against the owner of the liquor, samples of it which were retained as evidence.

HENRY ALBRECHT v. UNITED STATES

Supreme Court, January 3, 1927

[273 U. S. 1; 71 L. ed. adv. 333]

Arrest—Sufficiency of warrant—Improper verification.

1. An arrest under authority of a Federal court upon affidavit verified before a notary public of a State violates the clause of the Federal Constitution that no warrants shall issue but upon probable cause, supported by oath or affirmation, since the notary public was not authorized to administer oaths in Federal criminal proceedings.

Indictment—Sufficiency of information—Illegal arrest.

2. An information filed by leave of court does not become invalid because defendant is illegally arrested in consequence of it.

Indictment—Necessity of leave of court.

3. Leave to file an information in a criminal proceeding in a Federal court must be obtained from the court, and before granting

the leave the court must in some way satisfy itself that there is probable cause for the prosecution.

Indictment—Effect of oath of United States attorney.

4. An information filed by a United States attorney under his oath of office in a criminal proceeding must be accepted as sufficient to give verity to the allegations of the information and constitute probable cause for the prosecution.

Indictment—Effect of referring to affidavits in information.

5. The reference by a United States attorney in an information filed by him to affidavits of private individuals for the purpose of using the information and affidavits as a basis for application for a warrant of arrest, does not invalidate the information as indicating that it was presented otherwise than upon the oath of office of the United States attorney.

Criminal law—Necessity of formal accusation.

6. A person may not be prosecuted for a crime without a formal and sufficient accusation, even if he voluntarily submits to the jurisdiction of the court.

Courts—Jurisdiction—Effect of false arrest.

7. A false arrest does not necessarily deprive the court of jurisdiction of the proceeding in which it is made.

Appearance—Giving bail without objection.

8. Failure to object to the jurisdiction when giving bail bonds does not waive the invalidity of the warrant of arrest or operate as a general appearance.

Arrest—Motion to quash—When made.

9. An objection to the legality of an arrest because of the invalidity of the warrant may be made by a motion to quash the warrant after accused has given bail, though technically he is then held under his bond, the warrant having performed its function.

Arrest—Motion to information—Effect.

10. A motion to quash a warrant for arrest because of invalidity of the information which supports it does not raise the question of the validity of the warrant.

Arrest—Motion to quash—Effect of curing defects.

11. A motion to quash a warrant of arrest for validity because not supported by proper affidavits is ineffective after properly verified affidavits have been filed by leave of court.

Intoxicating liquors—Punishment for several offenses—Same liquor.

12. Congress may constitutionally provide for the punishment of the possession of intoxicating liquor, its sale, and the maintenance of a common nuisance, all based upon the same liquor.

A. J. BYARS v. UNITED STATES

Supreme Court, January 3, 1927

273 U. S. 28; 71 L. ed. adv. 331]

Searches and seizures—Sufficiency of warrant.

1. A search warrant is invalid under the Constitution and laws of the United States which is based upon an information stating that

affiant has good reason to believe, and does believe, that defendant has in his possession the intoxicating liquors, instruments, and materials sought by the warrant.

Search and seizure—Effect of State law.

2. Compliance with a State law can not validate a warrant for search and seizure, invalid under Federal law, in a proceeding in a Federal court under Federal law.

Search and seizure—Effect of success in search.

3. A search prosecuted in violation of the Federal Constitution is not made lawful by what it brings to light.

Evidence—Result of unlawful search.

4. Evidence of crime discovered by a Federal officer in making a search without lawful warrant can not be used against the victim of the unlawful search, where a timely challenge has been interposed.

Constitutional law—Construction—Protection of rights.

5. Constitutional provisions for the security of person and property are to be liberally construed, and it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

Evidence—Admissibility—Obtained by Federal officer accompanying State search.

6. Where a Federal prohibition agent is invited to join a party making a search under a warrant for violation of a State statute, in the hope that something of interest to him may be discovered, evidence found by him which is not within the purview of the warrant, and does not relate in any way to violation of State law, is not admissible against the one whose premises were searched.

ED TUMEY *v.* STATE OF OHIO

Supreme Court, March 7, 1927

[273 U. S. 510; 71 L. ed. adv. 508]

Judges—Interest—Disqualification.

1. Officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided.

Constitutional law—Due Process—Bias of judge.

2. An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him.

Constitutional law—Fine sole source of judge's costs—Effect.

3. One accused of violating the liquor law is unconstitutionally deprived of due process of law by being subjected to trial before a mayor the sole source of whose costs will be the fine imposed upon accused, unless the costs are so small that they may properly be ignored as within the maxim "de minimis non curat lex."

Constitutional law—When interest of judge becomes material.

4. The possibility of a mayor receiving \$12 as costs for conviction of one accused of violating the liquor law, and whose emoluments

from such source amount to about \$100 a month, in addition to his salary, is not an interest so minute, remote, trifling, or insignificant that his sitting as judge in the case will not deprive the accused of due process of law.

Constitutional law—Failure to provide due process—Prejudiced judge.

5. A statute seeking to stimulate small municipalities in the country part of counties in which large cities exist to organize and maintain courts to try persons accused of violations of the prohibition law anywhere in the county, which offers the municipalities a share of the fines collected and provides for the employment of detectives and other assistants to detect crime and be paid out of fines, and giving the mayor jurisdiction to sit without a jury to try offenders, with a right to share in the fines collected, and with no review of his decisions except on matters of law and flagrant disregard of the evidence, is unconstitutional as providing a tribunal in which accused is not afforded due process of law.

Courts—State—Constitutional limitations.

6. There is nothing in the Federal Constitution to prevent a State from providing such a system of courts as it chooses.

Jury—Right—Effect of fourteenth amendment.

7. There is nothing in the fourteenth amendment to the Federal Constitution that requires a jury trial for any offender.

Courts—Territorial jurisdiction—Federal Constitution.

8. A State may, so far as the Federal Constitution is concerned, give such territorial jurisdiction to its courts as it sees fit.

Fines—Right of State to dispose of.

9. The legislature of a State may constitutionally dispose of fines collected in criminal cases as it will, and may divide them between the State and the village whose mayor imposes and collects them.

Rewards—For initiating prosecutions.

10. The legislature of a State may constitutionally stimulate prosecutions by offering to those who shall initiate and carry on prosecutions rewards for so acting in the interests of the State and the people, and it may authorize the employment of detectives.

Judges—Disqualification—Right of accused.

11. An accused has a right to an impartial judge regardless of the evidence against him, and may halt the trial by objections seasonably raised because of the disqualification of the judge.

GEORGE FORD, GEORGE HARRIS, J. EVELYN, CHARLES H. BELANGER,
AND VINCENT QUARTARARO *v.* UNITED STATES

Supreme Court, April 11, 1927

[273 U. S. 593; 71 L. ed. adv. 610]

Indictment—Charging violation of treaty—Effect.

1. That an indictment for violation of the prohibition act charges conspiracy to violate the treaty with Great Britain when the treaty creates no offense against the laws of the United States is not fatal

if that part of the indictment is merely surplusage and may be rejected.

Indictment—Holding that part may be ignored—Amendment.

2. A mere judicial holding that a useless averment in an indictment is innocuous and may be ignored is not an unlawful amendment of the indictment by striking out words.

Indictment—Duplicity—Charging different overt acts in support of conspiracy.

3. An indictment charging a continuous conspiracy is not duplicitous because it describes several overt acts in pursuance of it.

Appeal—Interference with finding as to test of speed of boat.

4. The Supreme Court of the United States will not interfere with a ruling by the trial court affirmed by the circuit court of appeals as to the evidential weight of the test of the speed of a boat seized with intoxicating liquor on board for alleged intended smuggling into the United States.

Trial—Question for court—Admissibility of evidence.

5. If the question of the validity of the seizure of a vessel alleged to be involved in a conspiracy to violate the prohibition law depends upon the admission of evidence, it is for the court and not for the jury.

Appeal—Waiver of objection to jurisdiction.

6. Failure to file a plea to the jurisdiction, in case of a prosecution for conspiracy to violate the national prohibition act because of unlawful seizure of the vessel engaged in carrying out the conspiracy, before filing a plea of not guilty, waives all objection to the jurisdiction.

Appeal—Refusal to submit question to jury—Absence of error.

7. Refusal to submit to the jury, upon the trial of a conspiracy to violate the national prohibition law, the question as to the place of seizure of the vessel alleged to have been engaged in carrying out the conspiracy, is not error where accused have waived the question of jurisdiction of the court.

Indictment—Violation of national prohibition law—Offense against the United States.

8. An indictment charging a conspiracy to violate the national prohibition law, laid in a bay within the territorial jurisdiction of the United States, charges an offense against the United States.

Courts—Jurisdiction—Acts within bay.

9. Courts of the United States have jurisdiction of a conspiracy laid in a bay within the territorial jurisdiction of the United States to violate the national prohibition law.

Courts—Jurisdiction—Objection—Persons in court.

10. Persons charged with conspiracy to violate the national prohibition act, who have been brought within the jurisdiction of the court, can not object to the power of the court to try them because they were taken from a vessel seized on the high seas beyond the 3-mile limit.

Treaties—May 22, 1925—Effect.

11. If a vessel could not have been condemned for violation of the national prohibition law of the United States, or those on board convicted of such violation, before the treaty with Great Britain of May 22, 1925, they can not be after the ratification of such act.

Intoxicating liquors—Violation of national prohibition law—Persons on foreign ship.

12. Both the ship alleged to be engaged in violating the prohibition law, and those on board, may be subjected to prosecution on incriminating evidence under the provisions of the treaty with Great Britain of May 22, 1925, permitting examination of the ship's papers and inquiries of those on board, to ascertain whether or not the ship or those on board are endeavoring to import or have imported liquor into the United States, and the seizure of the vessel and the taking of it into port for adjudication.

Maxim—"Expressio unius"—Application.

13. The maxim, "*expressio unius est exclusio alterius*," properly applies only when in the natural association of ideas that which is expressed is so set over by way of contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment.

Treaties—Prosecution for conspiracy.

14. Persons may be tried for conspiracy to violate the national prohibition law if it is accompanied by overt acts under the provisions of the treaty with Great Britain of May 22, 1925, permitting search of vessels to ascertain whether or not those on board are endeavoring to import, or have imported, alcoholic beverages into the United States in violation of law, and permitting the seizure of the vessel on belief that it has committed, or is attempting to commit, an offense against the laws of the United States, prohibiting the importation of alcoholic beverages.

Conspiracy—Liability of persons out of jurisdiction.

15. That persons charged with conspiracy to violate the national prohibition law were on a vessel outside the territorial jurisdiction of the United States does not prevent their prosecution, if the conspiracy was continuously in operation between them and persons on shore, and overt acts were committed in pursuance of the conspiracy, consisting of the actual landing of liquor within the United States.

Appeal—Erroneous admission of evidence—Absence of error.

16. The erroneous admission of evidence in support of a conspiracy, which is merely cumulative proof of the conspiracy, which is practically undenied, is not reversible error.

DANIEL J. SHIELDS v. UNITED STATES

Supreme Court, April 11, 1927

[273 U. S. 545; 71 L. ed. adv. 629]

Criminal Law—Request to hold jury until agreement—Effect.

1. A joint request by the prosecuting attorney and counsel for accused made in the chambers of the judge without the presence of accused, to hold the jury in deliberation until they should agree upon a verdict, does not justify communications by the court to the jury in the absence of accused and his counsel, when the jury indicates a divergence of views with respect to the guilt of the several defendants.

Appeal—Giving written instructions in absence of accused.

2. It is reversible error for the trial judge in a criminal case to respond in writing, in the absence of accused and his counsel and without giving them an opportunity to be heard, to a written request by the jury for further instructions.

JAMES DUIGNAN v. UNITED STATES & PALL MALL REALTY CORP.

Supreme Court, April 25, 1927

[Not yet reported; 71 L. ed. adv. 653]

Courts—Jurisdiction—Proceeding to forfeit lease.

1. A district court of the United States has jurisdiction of a proceeding under section 23 of the national prohibition act to forfeit a lease for violation by the tenant of the provisions of that act as one arising under the laws of the United States, regardless of the citizenship of the parties.

Jury—Waiver.

2. The right to a jury trial may be waived where there is an appearance and participation in the trial without demanding a jury.

Appeal—Review—Waiver of jury.

3. Under United States Revised Statutes, section 649, unless there is a written stipulation waiving a jury, there can be no review of the rulings on questions of law in the course of the trial or of the sufficiency of a special finding to support the judgment.

Jury—Waiver by failure to demand.

4. Failure of a lessee in a proceeding in equity to forfeit a lease under section 23 of the national prohibition act for violation of the provisions of the act, to demand a trial by a common-law jury, waives any constitutional right to a jury trial which may exist.

Jury—Failure to answer—Absence of issues.

5. In the absence of an answer to a bill for forfeiture of a lease under section 23 of the national prohibition act, for violation by the tenant of the provisions of that act, there are no issues to be tried by a jury, and the court may find the facts to support its judgment without a jury.

Equity—Jurisdiction—Waiver.

6. Failure seasonably to object to the jurisdiction of equity to forfeit a lease under section 23 of the national prohibition act for violation by the tenant of its provisions waives any objection to such jurisdiction.

Appeal—Raising question for first time.

7. Constitutional objections to the forfeiture in equity of a lease under provisions of section 23 of the national prohibition act, for violation of the act by the tenant, can not be raised for the first time in the Supreme Court of the United States.

UNITED STATES v. MANLY S. SULLIVAN

Supreme Court, May 16, 1927

[Not yet reported; 71 L. ed. adv. 726]

Internal revenue—Income from illicit traffic in liquor.

1. Gains derived from illicit traffic in liquor are subject to income tax under the provisions of the act of 1921, declaring that gross income includes gains, profits, and income derived from the transaction of any business carried on for gain or profit, or gains or profits or income derived from any source whatever.

Internal revenue—Return—Effect of calling for privileged information.

2. One engaged in illicit traffic in intoxicating liquor can not refuse to make a return for income-tax purposes, but if the form of the return calls for answers which he is privileged from making under the provisions of the Constitution he must raise the objection in the return.

UNITED STATES v. JAMES M. LEE

Supreme Court, May 31, 1927

[Not yet reported; 71 L. ed. adv. 778]

Search and seizures—American vessels beyond 12-mile limit.

1. Under a statute authorizing officers of the Coast Guard to seize on the high seas, beyond the 12-mile limit, American vessels subject to forfeiture for violation of any law respecting the revenue, such officers may proceed to search and seize vessels when there is probable cause to believe them to be subject to seizure for violation of revenue laws and to arrest persons there engaged in such violation.

Evidence—Search and seizures—Failure to proceed against vessel—Effect.

2. A seizure and search of an American vessel beyond the 12-mile limit on the high seas for violation of the revenue laws is not made illegal by failure of the Government to proceed to forfeit the vessel so as to render inadmissible evidence secured by the search in a proceeding against those on board for violation of the revenue laws and prohibition act.

Evidence—Secured by use of searchlight—Admissibility.

3. Evidence discovered by the use of a searchlight directed upon a vessel on the high seas is not inadmissible, in a prosecution of those on board for violation of the revenue laws, as being obtained by a search prohibited by the Constitution.

Evidence lawfully obtained—Effect of subsequent trespass by officer.

4. Evidence legally obtained with respect to violation of the revenue laws is not rendered inadmissible, in a prosecution of persons charged with such violation, because of subsequent trespass by Government officers on the vessel in respect to which the evidence was secured.

ARTHUR MAUL v. UNITED STATES

Supreme Court, May 31, 1927

[Not yet reported; 71 L. ed. adv. 812]

Search and seizure—Vessel on high seas.

1. Officers of the Coast Guard may seize an American vessel on the high seas more than 12 miles from the coast for violating the conditions of its enrollment under the provisions of United States Revised Statutes, section 3072, although the act of September 21, 1922, authorizes search only within the 12-mile limit.

Statutes—Construction—Extent of repeal.

2. In construing altered revenue laws the whole system must be regarded in each alteration and no disturbance allowed of existing legislative rules of general application beyond the clear intention of Congress.

Search and seizure—Of American vessel for violating law respecting the revenue.

3. Seizure of an American vessel for violation of United States Revised Statutes, sections 4337 and 4377, with respect to her enrollment is, by virtue of a law respecting the revenue, within the meaning of United States Revised Statutes, section 3072, permitting seizure of vessels which become liable thereto by virtue of any law respecting the revenue.

Search and seizure—By officers of Coast Guard—When permitted.

4. Officers of the Coast Guard are to be deemed officers of the customs within the meaning of the United States Revised Statutes, section 3072, making it the duty of such officers to seize and secure any vessel which shall become liable to seizure by virtue of any law respecting the revenue.

Search and seizure—Construction of phrase "without their districts."

5. Officers may seize an American vessel upon the high seas outside of customs districts under provisions of United States Revised Statutes, section 3072, making it their duty to seize any vessel which shall become liable to seizure by virtue of any law respecting the revenue, as well without as within their respective districts.

Search and seizure—Power of nation on high seas.

6. Every nation having vessels on the high seas has power to regulate them and also to seize them for a violation of its laws.

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**END OF
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